

FINDING OF EMERGENCY

The Public Employment Relations Board finds that an emergency exists and that proposed emergency regulations are necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare. Failure to provide for implementation of a newly enacted factfinding process under the Meyers-Milias-Brown Act (MMBA) would leave uncertain the rights and responsibilities of parties subject to the MMBA, and would contribute to increased instability and strife in local government labor relations.

Specific Facts Showing the Need for Immediate Action

As a result of the enactment of Assembly Bill 646 (Chapter 680, Statutes of 2011), effective January 1, 2012, the MMBA, the collective bargaining statute applicable to local governments (cities, counties, and special districts) in California, will provide for a mandatory impasse procedure—factfinding before a tripartite panel—upon the request of an exclusive representative where the parties have not reached a settlement of their dispute. PERB will be responsible for the appointment of the neutral chairperson of the factfinding panel unless the parties mutually agree upon the selection of the chairperson. This new legislation and the duties imposed on PERB under it require amendments to existing regulations as well as the adoption of new regulations in order to fully implement the legislation and PERB's role.

The MMBA has not previously mandated the use of any impasse procedures with respect to negotiations between local agencies and unions representing their employees. The current regulations of the Board do not provide for the filing and processing of requests for factfinding under the MMBA. These legislative changes potentially affect hundreds of thousands of public employees in California, their employers, and the employee organizations that represent employees under the MMBA. PERB began receiving inquiries from public employers, employees and employee organizations, who are potentially affected by this new legislation, as soon as the legislation was chaptered. Public meetings were promptly convened by PERB in Northern and Southern California to discuss the legislation and the possible adoption of regulations, both of which were very well attended. The attendees included more than 130 representatives of employers and employee organizations, including numerous law firms that represent hundreds of local agencies and employee organizations that themselves represent multiple bargaining units within local government agencies. Extensive written comments and suggestions were received by PERB in response to the discussions at those meetings and the "discussion drafts" circulated by PERB staff.

In order that the procedural and substantive rights of employers, employees and employee organizations are protected, the Board finds that there exists an emergency need to adopt new regulations providing for the filing and processing of requests for factfinding under the MMBA, and to amend other existing regulations where necessary to conform to newly adopted regulations. In so doing, the Board has attempted to distinguish between those changes that are necessary to the immediate implementation of the statute as amended, and those areas that may be identified as requiring further regulations as the Board and the parties acquire experience with the provisions of the amended statute.

AUTHORITY AND REFERENCE

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act. Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Meyers-Milias-Brown Act. Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act. Government Code section 3563(f) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer-Employee Relations Act. Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act. Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Employment Protection and Governance Act. Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act.

General reference for section 32380 of the Board's regulations: Sections 3505.4, 3509, 3513(h), 3541.3(k), (n), 3563(j), (m), 71639.1 and 71825, Government Code, and Section 99561(j), (m), Public Utilities Code.

General reference for section 32603 of the Board's regulations: Sections 3502, 3502.1, 3505, 3505.2, 3505.3, 3505.4, 3505.5, 3505.7, 3506, 3507, 3507(d), 3507.1, 3507.5, 3508, 3508.1, 3508.5 and 3509, Government Code, and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

General reference for section 32604 of the Board's regulations: Sections 3502, 3502.1, 3502.5, 3505, 3505.2, 3505.4, 3505.5, 3505.7, 3506, 3507 and 3509, Government Code, and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608.

General reference for proposed section 32802 of the Board's regulations: Sections 3505.4, 3505.5, and 3505.7, Government Code.

General reference for proposed section 32804 of the Board's regulations: Sections 3505.4, 3505.5, and 3505.7, Government Code.

INFORMATIVE DIGEST

Section 32380 of the Board's regulations provides for administrative decisions that are not appealable. The proposed changes update reference citations to reflect the newly enacted provisions of the MMBA. (Chapter 680, Statutes of 2011.) The proposed changes also

conform this section to the text of proposed Section 32802 with regard to the appealability of Board agent determinations as to the sufficiency of a request for factfinding under the MMBA. Consistent with existing Sections 32380 and 32793, which do not allow for appeals to the Board itself concerning impasse determinations under other statutes administered by PERB, such determinations would not be appealable to the Board itself under the MMBA.

Section 32603 defines employer unfair practices under the MMBA. The proposed changes to this section are necessary to conform the language and reference citations to the recent amendments to the MMBA (Chapter 680, Statutes of 2011) that, for the first time, provide for a mandatory factfinding procedure.

Section 32604 defines employee organization unfair practices under the MMBA. The proposed changes to this section are necessary to conform the language and reference citations to the recent amendments to the MMBA (Chapter 680, Statutes of 2011) that, for the first time, provide for a mandatory factfinding procedure.

Proposed Section 32802 defines the process and timelines for filing a request for factfinding under the MMBA. The process and timelines are consistent with the express requirements and clear intent of the recent amendments to the MMBA (Chapter 680, Statutes of 2011), by which the Legislature identified the need to provide for a mandatory and uniform impasse procedure in order to make negotiations more effective. Where parties have not reached an agreement, an exclusive representative may file its request with PERB, and must serve its request on the employer. If the parties have not agreed to mediate the bargaining dispute, and are not subject to a required mediation process adopted pursuant to MMBA section 3507, the request must be filed within 30 days of the date that either party has provided the other with written notice of a declaration of impasse. Where a mediator has been appointed or selected to help the parties to effectuate a settlement, the request may not be filed until at least 30 days after the date the mediator was appointed, but also not more than 45 days following that date. In either circumstance, the intent of the timelines in the proposed section is to allow the parties sufficient time to resolve their dispute on their own, without utilization of the statutory impasse procedure, but also to provide certainty for all parties as to the time within which a request for factfinding may be filed. This proposed section also describes the Board's process concerning such requests and specifies the timeframe within which the Board must act. Finally, the section provides that determinations regarding whether a request filed under this section is sufficient shall not be appealable to the Board itself.

Proposed Section 32804 defines the timeline and process for the appointment of a neutral chairperson of a factfinding panel. Consistent with the statute, PERB would not appoint a chairperson if the parties are able mutually to agree upon a chairperson. In order to assist the parties, PERB would provide for each sufficient request a list of seven names of neutrals from which the parties could select the chairperson, either by the alternate striking of names or other method upon which the parties agree. The parties would also be able to select any other person as the chairperson by mutual agreement. If the parties are unable to agree on a chairperson, PERB would appoint one of the persons on the list of seven as the chairperson. The number seven was specified in order to provide an odd number for purposes of the alternate striking of names, and based on PERB's normal practice in similar situations under other statutes, as well

as the customary practice of many agencies that provide lists of neutrals to parties upon request. Consistent with the express provisions of the statute, the regulation also specifies that PERB shall not bear the costs for the chairperson under any circumstance.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed upon local agencies: None

Costs or savings to state agencies: None

Cost or savings on federal funding to the state: None

Cost impact on private persons or directly affected businesses: None

Significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states: None

Significant effect on housing costs: None

The proposed regulations will not affect small business because they only affect public employers and public employees.